

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1077

AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 33-13-9.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 9 of this chapter.

(b) Any participant whose employment as judge by the employer is terminated, regardless of cause, shall be entitled to a retirement annuity beginning on the date specified by such participant in a written application therefor, if all the following conditions are met:

- (1) The date upon which the annuity begins is not prior to the date of final termination of employment of such participant, or the date thirty (30) days prior to the receipt of such application by the board.
- (2) The participant:
 - (A) has attained at least the age of sixty-two (62) and has at least eight (8) years of service credit; ~~or~~
 - (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or**
 - ~~(B)~~ (C) has become permanently disabled.
- (3) The participant is not receiving any salary from the state for

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services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge.

(c) The amount of the annual retirement benefit to which a participant who elects to accept retirement after June 30, 1977, and who ~~has attained~~ is at least ~~age~~ sixty-five (65) years **of age or a participant who elects to accept retirement after June 30, 1999, and who is at least fifty-five (55) years of age and meets the requirements under subsection (b)(2)(B)** is entitled equals the product of:

- (1) the salary being paid for the office which the participant held at the time of the participant's separation from service; multiplied by
- (2) the percentage prescribed in the following table:

TABLE A

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. The amount of the annual retirement benefit to which a participant who elects to accept retirement before July 1, 1977, is entitled equals the average of the benefit computed under this subsection and the benefit the participant would have received under IC 33-13-8 as in effect on June 30, 1977.

(d) If the annual retirement benefit of a participant who began service as a judge before July 1, 1977, as computed under subsection (c), is less than the amount the participant would have received under



IC 33-13-8 as in effect on June 30, 1977, the participant is entitled to receive that greater amount as the participant's annual retirement benefit instead of the benefit computed under subsection (c).

(e) **Except as provided in subsection (b)(2)(B) and subsection (c),** if a participant who elects to accept retirement after June 30, 1977, has not attained age sixty-five (65) years, the participant is entitled to receive a reduced annual retirement benefit which equals the benefit which would be payable if the participant were age sixty-five (65) reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but while entitled to a future benefit.

(f) The amount of the annual benefit to which a participant who has become permanently disabled is entitled equals the product of:

- (1) the salary being paid for the office which the participant held at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

TABLE B

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(g) The surviving spouse or surviving child or children, as designated by the participant, of any participant who has qualified



before July 1, 1977, to receive the retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, shall, upon the death of such participant, be entitled to an annuity in an amount equal to the greater of:

- (1) the sum of:
 - (A) two thousand dollars (\$2,000); plus
 - (B) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of the participant's death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits prior to the participant's death; or
- (2) the amount determined under the following table:

TABLE C

Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(h) If a participant who qualifies after June 30, 1977, and before July 1, 1983, to receive a retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, dies, the participant's surviving spouse or surviving child or children, as designated by the participant, is entitled to an annuity in an amount equal to the greater of:

- (1) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits before death; or
- (2) the amount determined under TABLE C in subsection (g)(2).

(i) If a participant:

- (1) dies after June 30, 1983; and
 - (2) on the date of the participant's death:
 - (A) was receiving benefits under this chapter;
 - (B) had completed at least eight (8) years of service and was in service as a judge;
 - (C) was permanently disabled; or
 - (D) had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit;
- the participant's surviving spouse or surviving child or children, as designated by the participant, is entitled, regardless of the participant's



age, to an annuity in an amount equal to the greater of the amount determined under TABLE C in subsection (g)(2) or fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits on the participant's date of death, with reductions as necessary under subsection (e).

(j) Notwithstanding subsection (i), if a participant:

- (1) died after June 30, 1983, and before July 1, 1985; and
- (2) was serving as a judge at the time of death;

the surviving spouse is entitled to the same retirement annuity as the surviving spouse of a permanently disabled participant entitled to benefits under subsection (h).

(k) The annuity payable to a surviving child or children under subsection (g), (h), or (i) is subject to the following:

- (1) The total monthly benefit payable to a surviving child or children is equal to the same monthly annuity that was to have been payable to the surviving spouse.
- (2) If there is more than one (1) child designated by the participant, then the children are entitled to share the annuity in equal monthly amounts.
- (3) Each child entitled to an annuity shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.
- (4) Upon the cessation of payments to one (1) designated child, if there is at least one (1) other child then surviving and still entitled to payments, the remaining child or children shall share equally the annuity. If the surviving spouse of the participant is surviving upon the cessation of payments to all designated children, the surviving spouse will then receive the annuity for the remainder of the spouse's life.
- (5) The annuity shall be payable to the participant's surviving spouse if any of the following occur:
 - (A) No child named as a beneficiary by a participant survives the participant.
 - (B) No children designated by the participant are entitled to an annuity due to their age at the time of death of the participant.
 - (C) A designation is not made.
- (6) An annuity payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the

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participant.

SECTION 2. IC 33-13-9.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) Benefits provided under this section are subject to IC 33-13-8-3.5.

(b) A participant shall be considered permanently disabled if the board has received a written certificate by at least two (2) licensed and practicing physicians, appointed by the board, indicating that the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood and that such condition is likely to be permanent. Such participant shall be reexamined by at least two (2) physicians appointed by the board, periodically at such times as the board shall designate but at intervals of not to exceed one (1) year. If in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits shall cease to be payable as of the date of such examination unless, on that date, the participant ~~shall have reached the age of~~ **is at least sixty-five (65) years of age or is at least fifty-five (55) years of age and meets the requirements under section 4(b)(2)(B) of this chapter.**

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

SECTION 3. IC 33-13-9.1-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.5. (a) This section applies only to a person who:**

- (1) is a judge participating under this chapter;**
- (2) before becoming a judge was a member of an Indiana public employees' retirement fund;**
- (3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 10 of this chapter;**
- (4) has not attained vested status under an Indiana public employees' retirement fund for the employment described in subdivision (2); and**
- (5) has at least eight (8) years of service credit in the judges' retirement system.**

(b) If a person becomes a participant in the judges' 1977 benefit system under this chapter, credit for service described in



subsection (a) shall be granted under this chapter by the board if:

- (1) the prior service was credited under an Indiana public employees' retirement fund; and
- (2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1977 benefit system as the total actual cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1977 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1977 benefit system the amount credited to the judge's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in an Indiana public employees' retirement fund is waived.

SECTION 4. IC 33-13-10.1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. Any participant whose employment as judge is terminated is entitled to a retirement benefit computed under section 7 of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

- (1) The date upon which the benefit begins is not before the date of final termination of employment of the participant or the date thirty (30) days before the receipt of the application by the board.
- (2) The participant:
 - (A) has attained at least the age of sixty-two (62) and has at least eight (8) years of service credit; ~~or~~
 - (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or**
 - ~~(B)~~ (C) has become permanently disabled.
- (3) The participant is not receiving any salary from the state for



services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge.

SECTION 5. IC 33-13-10.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) Benefits provided under this section are subject to IC 33-13-8-3.5 and section 13 of this chapter.

(b) The amount of the annual retirement benefit to which a participant who applies for a retirement benefit and who ~~has attained~~ **is at least age sixty-five (65) years of age or is at least fifty-five (55) years of age and meets the requirements under section 6(2)(B) of this chapter** is entitled equals the product of:

- (1) the salary that was paid to the participant at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

TABLE

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(c) **Except as provided in section 6(2)(B) of this chapter and subsection (b)**, if a participant who applies for a retirement benefit has not attained age sixty-five (65) years, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were age sixty-five (65) reduced by one-tenth percent (0.1%) for each month that the participant's age at



retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but while entitled to a future benefit.

SECTION 6. IC 33-13-10.1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) A participant shall be considered permanently disabled if the board has received a written certification by at least two (2) licensed and practicing physicians, appointed by the board, that:

- (1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and
- (2) the condition is likely to be permanent.

The participant shall be reexamined by at least two (2) physicians appointed by the board, at such times as the board may designate but at intervals of not to exceed one (1) year. If in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits shall cease to be payable as of the date of such examination unless, on that date, the participant **has reached the age of is at least** sixty-five (65) years of age **or is at least fifty-five (55) years of age and meets the requirements under section 6(2)(B) of this chapter.**

(b) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

SECTION 7. IC 33-13-10.1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. (a) This section applies to a person who:

- (1) is a judge participating under this chapter;
- (2) before becoming a judge was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;
- (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).



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(b) If a person becomes a participant in the judges' 1985 benefit system under ~~IC 33-13-10.1-1~~ **section 1 of this chapter**, credit for prior service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

- (1) the prior service was credited under the public employees' retirement fund;
- (2) the state contributes to the judges' 1985 benefit system the amount the board determines necessary to amortize the prior service liability over a period determined by the board, but not more than ten (10) years; and
- (3) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1985 benefit system during the prior service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

- (1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age **or when the participant is at least fifty-five (55) years of age and meets the requirements under section 6(2)(B) of this chapter** and equals the actuarial equivalent of the vested retirement benefit that is:

- (A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

- (B) based solely on:

- (i) creditable service;
- (ii) the average of the annual compensation; and
- (iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

- (2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount

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credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age **or at least fifty-five (55) years of age under section 6(2)(B) of this chapter** that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1985 benefit system may be granted only under subsection (b).

~~(5) Credit for prior service in the public employees' retirement fund for service other than as a full-time referee, full-time commissioner, or full-time magistrate remains under the public employees' retirement fund and may not be credited under the judges' 1985 benefit system.~~

SECTION 8. IC 33-13-10.1-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14.5. (a) This section applies only to a person who:**

- (1) is a judge participating under this chapter;**
- (2) before becoming a judge was a member of an Indiana public employees' retirement fund;**
- (3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 14 of this chapter;**
- (4) has not attained vested status under an Indiana public employees' retirement fund for the employment described in subdivision (2); and**
- (5) has at least eight (8) years of service credit in the judges' retirement system.**

(b) If a person becomes a participant in the judges' 1985 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

- (1) the prior service was credited under an Indiana public employees' retirement fund; and**
- (2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual**



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payments, the amount determined by the actuary for the 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1985 benefit system the amount credited to the judge's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in an Indiana public employees' retirement fund is waived.

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